THE

Narrative & Reaſons

Of the Honorable Houſe of

COMMONS,

Concerning the

TRYAL of the LORDS

IN THE

TOWER.

Delivered at a

CONFERENCE

WITH

The LORDS, *May*, 26*th*. 1679.

London, Printed in the Year, 1679.

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Tryal of the LORDS in the *Tower*, &c.

THE *Commons* have always desired, that a good Correspondence may be preserved between Both Houses. There is now depending between Your *Lordships*, and the *Commons*, a Matter of the greatest Weight; In the Transaction of which, Your *Lordships* seem to apprehend some Difficulty in the Matter proposed by the *Commons*.

To clear this, the *Commons* have desired this Conference; and by it, they hope to manifest to You *Lord-*

ſhips, that the Propoſitions of the Houſe of *Commons*, made by their *Committee*, in Relation to the Tryal of the Lords in the *Tower*, have been only ſuch as are well warranted by the Laws of *Parliament*, and Conſtitution of the Government, and in no ſort Intrench upon the Judicature of the *Peers*: But are moſt neceſſary to be inſiſted upon, that the Antient Rights of Judicature in *Parliament*, may be maintained.

The *Commons* readily acknowledge, that the Crimes charged upon the Earl of *Powis*, &c. are of deep Guilt, and call for ſpeedy Juſtice: But withal, they hold any Change in Judicature in *Parliment*, made without Conſent in full *Parliament*, to be of Pernicious Conſequence both to His *Majeſty*, and his Subjects: And conceive themſelves obliged to tranſmit to their Poſterity, all the Rights, which of this Kind they have Received from their Anceſtors, by putting Your *Lordſhips* in mind, of the Progreſs that hath already been between the Two Houſes, in Relation to the Propoſitions made by the *Commons*, and the Reaſonableneſs of the Propoſitions themſelves: They doubt not, to make it appear, that their Aim has been no other than to avoyd ſuch Conſequences, and to preſerve that Right; And that there is no Delay of Juſtice on their Part. And to that end, do offer to Your *Lordſhips* the enſuing Reaſons and Narrative, that the *Commons*, in bringing the Earl of *Danby* to Juſtice, and in the Diſcovery of the Execrable and Traiterous Conſpiracy, (of which the Five *Popiſh* Lords now ſtand Impeached; and for which, ſome of their Wicked Accomplices have already undergone the Sentence of the Law, as Traitors and Murtherers) have labour'd under many great Difficulties, is not unknown to Your *Lordſhips*: Nor is it leſs known

to

to Your *Lordſhips*, that upon the Impeachment of the Houſe of *Commons* againſt the Earl of *Danby* for High Treaſon, and other High Crimes, Miſdemeanors, and Offences, even the Common Juſtice, of Sequeſtring him from *Parliament*, and forth-with Committing him to ſafe Cuſtody, was then Required by the *Commons*, and Denyed by the Houſe of *Peers*; though he then Sate in Their Houſe: Of which, Your *Lordſhips* have been ſo ſenſible, that at a Free Conference the *Twelfth* of *April*, laſt, Your *Lordſhips* declared, That it was the Right of the *Commons*, and well warranted by Preſidents of former Ages; That upon an Impeachment of the *Commons*, a *Peer* ſo Impeached, ought of Right to be ordered to with-draw, and then to be Committed: And had not that Juſtice been denyed to the *Commons*, a great Part of this *Seſſion* of *Parliament*, which hath been ſpent in Framing and Adjuſting a Bill, for cauſing the Earl of *Danby* to Appear, and Anſwer that Juſtice from which he was fled, had been ſaved; and had been imployed for the Preſervation of His *Majeſties* Perſon, and the Security of the Nation, and in Proſecuting the other five Lords. Neither had he had the Opportunity of Procuring for himſelf, that Illegal Pardon, which bears Date the Firſt of *March*, laſt paſt; and which he hath now Pleaded in Barr of his Impeachment: Nor of waſting ſo great a Proportion of the Treaſure of the Kingdome, as he hath done ſince the *Commons* Exhibited their Articles of Impeachment againſt him. After which time, thus loſt by reaſon of the Denyal of that Juſtice, which of Right belonged to the *Commons*, upon their Impeachment; The ſaid Bill being ready for the Royal Aſſent, the ſaid Earl rendred himſelf; and by Your *Lordſhips* Order of the Six-

teenth

tenth of *April*, laſt, was Committed to the *Tower*: After which, he pleaded the ſaid Pardon; and being preſt, did at length declare, That he would Rely upon, and abide by that *Plea*. Which Pardon pleaded, being Illegal and Voyd; and ſo, ought not to bar or preclude the *Commons*, from having Juſtice upon their Impeachment. They did there-upon (with their *Speaker*, on the Fifth of *May*, Inſtant, in the Name of themſelves, and of all the *Commons* of *England*) demand Judgment againſt the ſaid Earl, upon their Impeachment; not doubting, but that Your *Lordſhips* did intend, in all Your proceedings upon the Impeachments, to follow the uſual Courſe and Method of *Parliament*; but the *Commons* were not a little Surpriſed by the Meſſage from your Lordſhips, delivered them on the ſeventh of *May*, thereby Acquainting them, that as well the Lords Spiritual as Temporal, had ordered the tenth of *May* Inſtant, ſhould be the day for hearing the Earl of *Danby*, to make good his Plea of his Pardon; and that on the thirteenth of *May*, the other five Lords Impeached, ſhould be brought to their Tryal; and that your Lordſhips had Addreſſed to his Majeſty for Naming of a High-Steward, as well in the Caſe of the Earl of *Danby*, as the other five Lords; upon Conſideration of the ſaid Meſſage, the *Commons* found that the Admitting the Lords Spiritual to exerciſe Juriſdiction in theſe Caſes, was an Alteration of the Judicature in *Parliament*; and which extended as well to the Proceedings againſt the five Lords as the Earl of *Danby*; and that if a Lord High Steward ſhould be Neceſſary, upon Tryals or Impeachments of the *Commons*, the power of Judicature in *Parliament* upon Impeachments, might be Defeated

by

by ſuſpending or denying a Commiſſion to Conſtitute a Lord *High Steward*, and that the ſaid days of Tryal appointed by your Lordſhips, were ſo near to the time of your ſaid Meſſage, that theſe matters, and the Methods of Proceedings upon the Tryals, could not be Adjuſted by Conference between the two *Houſes* before the day ſo Nominated; and Conſequently the *Commons* could not then Proceed to Tryal, unleſs the Zeal which they had for ſpeedy Judgment againſt the Earl of *Danby*, that ſo they might proceed to the Tryal of the other five *Lords*, ſhould Induce them at this Juncture, both to Admit an enlargment of your Lordſhips Juriſdiſdiction, and ſit down under theſe or any hardſhips (though with the hazard of all the *Commons* Power of Impeaching for the time to come) rather than the Tryal of the ſaid five *Lords* ſhould be deferred for ſome ſhort time, whilſt theſe matters might be agreed and on ſetled; for Reconciling differences in theſe great and weighty matters, and for ſaving that time which would neceſſarily have been ſpent in debates, at Conferences between the Two *Houſes*, and for Expediting the Tryals, without giving up the Power of Impeachments, or rendring them ineffectual, the *Commons* thought fit to propoſe to your *Lordſhips*, that a Committee of both *Houſes* might be appointed for this purpoſe; at which Committee, when agreed to by your *Lordſhips*, it was firſt propoſed, that the time of the Tryal of the *Lords* in the *Tower*, ſhould be put off till the other matters were Adjuſted; and it was then agreed, That the propoſition as to the time of Tryal, ſhould be the laſt thing Conſidered; and the Effect of this agreement, ſtands reported upon your *Lordſhips Books*; after which, the *Commons* Communicated

cated to your *Lordſhips* by your Committee, a Vote of theirs, *viz.* That the Committee of *Commons*, ſhould Inſiſt upon the former Vote of their *Houſe*, that the *Lords Spiritual* ought not to have any Vote in any proceedings againſt the *Lords* in the *Tower*; and that when that matter ſhould be ſetled, and the method of proceedings Adjuſted, the *Commons* would then be ready to proceed upon the Tryal of the Pardon of the *Earl* of *Danby*; againſt whom, they had before demanded Judgment; and afterwards to the Tryal of the other five *Lords* in the *Tower*: which Vote Extended as well to the *Earl of Danby*, as the other five *Lords*: but the *Commons* have as yet received nothing from your *Lordſhips* towards an Anſwer to that Vote; ſave that your *Lordſhips* have acquainted them, that the *Biſhops* have Asked leave of the *Houſe* of *Peers*, that they might withdraw themſelves from the Tryal of the ſaid five *Lords*, with Liberty of entring their uſual proteſtation: And though the *Commons* Committee, have almoſt dayly declared to your *Lordſhips* Committee; that that was a neceſſary point of Right to be ſettled, before the Trials; and offered to Debate the ſame, your Committee always Anſwered, that they had not any Power from your *Lordſhips*, either to Confer upon, or to Give any Anſwer concerning that Matter.

And yet Your *Lordſhips*, without having given the *Commons* any ſatisfactory Anſwer to the ſaid Vote, or permitting any Conference or Debate there-upon, and contrary to the ſaid Agreement, did on *Thurſday* the Twenty-Fourth of *May*, ſend a Meſſage to the *Commons*, declaring, That the *Lords Spiritual*, as well as *Temporal*, had ordered, That the Twenty-Seventh of this Inſtant *May* be appointed for the Tryal of the five Lords.

So

So that the Commons cannot but apprehend your *Lordſhips* have not only departed from what was agreed on, and in Effect laid aſide that Committee Conſtituted for Preſerving a good Underſtanding betwixt the two Houſes, and better Diſpatch of the weighty Affairs now Depending in Parliament, but muſt alſo needs conclude from the ſaid Meſſage, and from the Vote of your Lordſhips of the 14th. of *May*, *That the Lords Spiritual have a Right to ſtay and ſit in Court till the Court proceeds to Guilty or not Guilty*, and from the Biſhops asking leave (as appears by the Lords Books) two days after the ſaid Vote that they might withdraw themſelves from the Tryal of the five Lords, with Liberty of entering their uſual Proteſtations, and from their perſiſting ſtill to go on & give their Votes in proceeding upon the Impeachments, that their deſire of leave to with-draw at the ſaid Tryal, is only an evaſive Anſwer to the forementioned Vote of the *Commons*, and chiefly intended as an Argument for a right of Judicature upon Proceedings upon Impeachments; and as a Reſerve to Judge upon the Earl of *Danby*'s Plea of Pardon; and upon theſe and other like Impeachments; although no ſuch Power was ever Claimed by their Predeceſſors, but is utterly denied by the *Commons*.

And the *Commons* are the rather Induced to believe it ſo intended, becauſe the very asking to withdraw, ſeemes to imply aright to be there, and that, they cannot be abſent without it; becauſe by this way they would have it in their Power, whether or no for the Future, either in the Earl of *Danby*'s Caſe or any other, they will ever ask Leave to be Abſent, and the

Temporal Lords have like Power of Denying Leave, if that ſhall be Admitted once neceſſary.

The *Commons* are therefore Obliged not to proceed to the Tryal of the five Lords the twenty ſeventh of this inſtant *May*, but to adhere to their afore-ſaid Vote. And for their ſo doing, beſides, what hath been now and formerly by them ſaid to your Lordſhips, do offer you theſe Reaſons following.

THE

THE REASONS.

1. BEcauſe your *Lordſhips* have Received the Earl of *Danby*'s Plea of Pardon, with a very long and unuſual Proteſtation; wherein he hath Aſpers'd his *Majeſty* with falſe Suggeſtion, as if his *Majeſty* had Commanded or Countenanced the Crimes he ſtands Charged with: And particularly, Suppreſſing and Diſcouraging the Diſcovery of the *Plot*; and endeavouring to Introduce an Arbitrary and Tyrannical way of Government: which remains as a Scandal upon Record, againſt his *Majeſty*; tending to render his Perſon and Government odious to his People. Againſt which, it ought to be the Firſt and Principal Care of Both Houſes, to Vindicate his *Majeſty*, by doing Juſtice againſt the ſaid Earl.

2. The ſetting up a Pardon to be a Bar of an Impeachment, defeats the whole Uſe and Effects of Impeachments: And ſhould this Point be admitted, or ſtand doubted, it would totally diſcourage the Exhibiting any for the Future;

whereby the Chief Inſtitution for the Preſervation of the Government, (and conſequently, the Government it ſelf) would be deſtroyed. And therefore, the Caſe of the ſaid Earl, which in Conſequence concerns all Impeachments whatever, ought to be determined before that of the five Lords, which is but their particular Caſe, and without reſorting to many Authorities of greater Antiquity. The *Commons* deſire your your *Lordſhips*, to take Notice (with the ſame Regard they do) of the Declaration, which that Excellent Prince, King *Charles the Firſt*, of Bleſſed Memory, made in this behalf, in his *Anſwer* to the *Nineteenth Propoſition* of Both Houſes of *Parliament*: Wherein, ſtating the ſeveral Parts of this Regulated Monarchy, he ſayes, The *King*, the Houſe of *Lords*, and the Houſe of *Commons*, have (each) particular Priviledges: And among thoſe which belong to the *King*, he reckons *Power of Pardons*. After the Enumerating of which, and other his Prerogatives, his ſaid *Majeſty* adds thus: *Again, That the Prince may not make uſe of this high and perpetual Power, to the Hurt of thoſe for whoſe Good he hath it; and make uſe of the Name of Publick Neceſſity, for the Gain of his private Favourites and Followers, to the Detriment of his People; The Houſe of* Commons *(an Excellent*

Conſerver

Conſerver of Liberty) *is ſolely intruſted with the Firſt Propoſitions, concerning the Leavyes of Moneys, and the Impeaching of thoſe, who for their own Ends, (though Countenanced by any Surreptitiouſly-gotten Command of the* King) *have Violated that Law, which he is bound (when he knows it) to Protect. And to the Protection of which, they were bound to advaſe him; at leaſt not to ſerve him in the contrary. And the Lords, being truſted with a Judicatory Power, are an excellent Skreen and Banke, between the Prince and People, to aſſiſt each againſt any Encroachments of the other; and by juſt Judgment, to Preſerve that Law which ought to be the Rule of every One of the Three, &c. Therefore, the Power legally placed in Both Houſes, is more than Sufficient, to prevent and reſtrain the Power of Tyranny, &c.*

3. Until the Commons of England have right down them againſt this Plea of Pardon, they may Juſtly apprehend that the whole Juſtice of the Kingdome, in the Caſe of the Lords may be Obſtructed, and defeated by pardons of like Nature.

4. An Impeachment is Virtually the voice of every particular Subject of this Kingdome Crying out againſt an Oppreſſion, by which every member of that body is equally wounded; and it will prove a matter of ill Conſequence,

that

that the Universality of the People should have Occasion Ministred and Continued to them, to be Apprehensive of utmost danger from the Crown, from whence they of right expect protection.

5. The Commons Exhibited Articles of Impeachments against the said Earl, before any against the five other Lords, and demanded Judgement upon those Articles; whereupon your Lordships having appointed the Tryal of the said Earl, to be before that of the other five Lords; now your Lordships having since inverted that Order, gives a great Cause of doubt to the House of Commons, and raises a Jealousie in the hearts of all the Commons of *England*; that if they should proceed to the Tryal of the five Lords in the first place, not only Justice will be Obstructed in the Case of those Lords; but that they shall never have right done them in the matter of this Plea of Pardon, which is of so fatal Consequence to the whole Kingdome, and a New devise to frustrate publick Justice in Parliament.

Which Reasons and Matters being duely weighed by your Lordships, the Commons doubt not but your Lordships will receive Satisfaction concerning their propositions and proceedings;

ceedings; and will agree, that the Commons ought not, nor can without deſerting their Truſt, depart from their former Vote, Communicated to your Lordſhips: *That the Lords Spiritual ought not to have any Vote in any proceedings againſt the Lords in the Tower; and when that matter ſhall be ſetled, and the Methods of proceedings Adjuſted, the Commons ſhall then be Ready to proceed upon the Tryal of the Pardon of the Earl of* Danby, (*againſt whom they have already demanded Judgment*) *and afterwards to the Tryal of the other Five Lords in the* Tower.

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ceedings; and will agree, that the Commons ought not, nor can without deserting their Trust, depart from their former Vote, Communicated to your Lordships: That the Lords Spiritual ought not to have any Vote in any proceedings against the Lords in the Tower; and when that matter shall be setled, and the Methods of proceedings Adjusted, the Commons shall then be Ready to proceed upon the Trial of the Murder of the Earl of Danby, (against whom they have already demanded Judgment) and afterwards to the Trial of the other Five Lords in the Tower.

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